

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF TENNESSEE  
WINCHESTER DIVISION

In re:

No. 00-11158  
Chapter 7

LAWRENCE A. SOBIEK  
Debtor

WILLIAM HACKNEY

Plaintiff

v

Adversary Proceeding  
No. 01-1022

LAWRENCE A. SOBIEK  
Defendant

**MEMORANDUM OPINION**

Appearances: Andrew C. Rambo, Andrew C. Rambo, P.C., Shelbyville, Tennessee, Attorney  
for William Hackney

Paul E. Jennings, Paul E. Jennings Law Offices, P.C., Murfreesboro,  
Tennessee, Attorney for Lawrence A. Sobiek

R. THOMAS STINNETT  
UNITED STATES BANKRUPTCY JUDGE

This adversary proceeding came on for trial on April 15, 2002, upon the complaint, as

amended, of William Hackney (“Hackney”) objecting to discharge of the debtor (“Sobiek”) and dischargeability of a debt owed to Hackney by Sobiek. At the commencement of the trial, the plaintiff announced that he would not proceed with the dischargeability complaint under 11 U.S.C. § 523. For the reasons hereinafter stated, the complaint of Hackney will be dismissed.

The parties entered in to a written Stipulation of Facts as follows:

1. This court has jurisdiction over this case and these adversary proceedings pursuant to 28 U.S.C. § 1334.

2. Venue of this case and the proceedings is in the United States District Court for the Eastern District of Tennessee, Winchester Division pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The matters involved in these adversary proceedings are core proceedings within the bankruptcy case under 28 U.S.C. § 157(b)(2)(I), (K), and (O) and thus the parties agree this court may enter orders dispositive of the relief sought by the complaint filed herein.

4. The relief sought herein is within the provisions of 11 U.S.C. § 105, 362, 523, 524 and 727.

5. On February 24, 1999, the defendant, Hackney, caused to be issued from the General Sessions Court of Bedford County a Warrant to Recover Personal Property directed to the Plaintiff. It was asserted that Hackney was entitled to possession of a John Deere 2750 tractor, 10' bushhog and John Deere 245 front end loader because of “default on payments”. The value of the property was alleged to be \$18,500.

6. On or about August 26, 1999, the General Sessions Court granted to Hackney possession of the described property.

7. Within the time allowed, appeal was taken by Sobiek of the order to the Circuit Court of Bedford County, Tennessee.

8. A hearing was scheduled in the Circuit Court for November 2, 1999. Sobiek believed all matters in controversy had been settled.

9. By letter dated November 4, 1999, counsel for Hackney transmitted to counsel for Sobiek a proposed agreed order together with a note and security agreement. None of the documents were signed by Sobiek and thus no order was entered finalizing the settlement referenced in paragraph 8 above.

10. Prior to hearing on appeal on November 23, 1999, the debtor sold the bushhog, loader, and canopy from the tractor to Farm Sales and Service Co., in Eagleville, Tennessee, a bona fide purchaser, for \$5,500.

11. On December 10, 1999, there was recorded a lis pendens lien by Hackney attendant to an "Abstract of Suit in Circuit Court of Bedford County, Tennessee, styled *Bill Hackney*

*v. Lawrence A. Sobiek*, Civil Action No. 8210". It is stated therein that "the above described real estate is subject to the satisfaction of their demand in the lawsuit shown in this Abstract in the amount of \$18,532.00".

12. On January 7, 2000, Sobiek sold the tractor to Farm Sales and Service Co., in Eagleville, Tennessee, a bona fide purchaser for \$11,000.

13. On January 20, 2000, the matter of *Bill Hackney v. Lawrence A. Sobiek*, No. 8210, was heard by the Circuit Court. Following hearing of the matter, the court entered its order which stated: "... the Plaintiff (Hackney) is entitled to possession of the following equipment, plus pre-judgment interest of \$1,685.56:

1 John Deere 2750 tractor, serial no. L02750G489476  
1 245 John Deere front end loader and bushhog cutter, serial no. 01956".

This order was signed by the Judge on February 22, 2000, and entered February 24, 2000.

14. On January 20, 2000, there was issued from the General Sessions Court an arrest order for Sobiek. The "Affidavit of Complaint" states as follows:

"The undersigned affiant makes oath in due form of law to the following statement of facts: That on (or about) the 17th of January, 2000, Lawrence A. Sobiek committed the offense of, Hindering secured Creditor in the above county. Further, affiant makes oath that the essential facts constituting said offense, the sources of affiant's information, and the reason why his/her information is believable concerning said facts are as follows: on or about January 17, 2000, the above named defendant did sell a tractor (John Deere serial #L02750G489476) in which the affiant has a Judgment lien against said tractor. This occurred in Bedford Co. TN."

15. The "State Warrant" shows that Sobiek was arrested January 20, 2000, and

bond was set at \$1,500.00. The charge was "Hindering Secured Creditor, TCA Code: 39-14-116".

16. Subsequently, there was entered in the Circuit Court an order stating as follows:

"This cause came to be heard on the 22nd day of February, 2000, before the Honorable Lee Russell, Judge, holding the Circuit Court for Bedford County, Tennessee, at Shelbyville, upon Plaintiff's motion, pursuant to Rule 52 to alter and amend the judgment entered in this case in Minute Book \_\_\_\_, Page \_\_\_\_, Circuit Court Clerk's Office of Bedford County, Tennessee, and;

It appearing to the court, upon unrefuted testimony, that the Defendant, prior to trial, sold the equipment which is the subject of this action, and which the court ordered possession given to Plaintiff. It further appearing to the Court, upon unrefuted testimony, that the Defendant is therefore indebted to Plaintiff in the amount of \$18,531.00 and that the judgment heretofore entered should be altered and amended to reflect that the Plaintiff should have a money judgment on the note and security agreement which the Plaintiff was required to purchase on default. Attorney fees in the amount of \$6,177.00 are reasonable in light of the facts of this matter, and the judgment shall bear interest from the date of hearing, January 20, 2000, pre-judgment interest in the amount of \$1,685.56 having been previously ordered by the Court.

IT IS, THEREFORE, ORDERED ADJUDGED AND DECREED that Plaintiff shall have Judgment against the Defendant in the amount of \$26,393.56, which shall bear interest at the statutory rate from January 20, 2000, together with the costs of this cause, for which execution may issue, if necessary."

As with the Order referenced in paragraph 13, above, this order was signed February 22, 2000, and entered February 22, 2000.

It is the order referenced in paragraph 13 that was the subject of the Rule 52 motion.

17. Neither Sobiek nor his attorney, Richard Dugger, was present at the hearing before the Circuit Court on February 22, 2000, after which the order referenced in paragraph 16 was entered.

18. Subsequently, Sobiek filed a timely motion to alter or amend the judgment to the extent of the award of attorney fees, it being insisted that no provision allowed for these fees.

19. Hackney issued a possessory warrant and attached a 1984 Ford F25 pick-up truck on February 23, 2000. Mike Shockey towed and stored the vehicle until released and the sum of \$915 is now due and owing by the Debtor.

20. On March 7, 2000, Sobiek filed a petition seeking relief under Chapter 13 of the Bankruptcy Code. Also, Sobiek filed a Motion for Return of the vehicle seized as a result of the February 23, 2000, state court seizure order.

21. Hackney filed an objection to the confirmation of the Chapter 13 plan asserting a “judicial lien” as a result of his Lien Lis Pendens and the state court order of February 22, 2000, as discussed in paragraph 15 above.

22. Sobiek in response to the objection to confirmation asserted there was no final decision in the state court action prior to the Chapter 13 filing. By order entered May 5, 2000, Judge Kelley directed the return of the seized property. On June 19, 2000, this Court heard the objection to confirmation of the Chapter 13 plan. The objection was overruled and the plan confirmed. The Chapter 13 case was subsequently converted to a case under Chapter 7 on December 29, 2000.

23. On January 29, 2001, Hackney filed Adversary Proceeding No. 01-1022. This action asserted Sobiek should be denied his discharge under 11 U.S.C. § 727. Subsequently, on or about September 12, 2001, by agreement of counsel, the joint pretrial statement previously filed with this Court was amended to assert an alternative cause of action under “11 U.S.C. § 523(a)”.

24. Hackney was not the holder of a consensual security interest nor did Sobiek grant to him a security interest in the John Deere 2750 tractor, front end loader or bushhog cutter.

25. The criminal case was filed as a result of an attempt to enforce the order of the Circuit Court of Bedford County, Tennessee as outlined in paragraph 12 herein.

26. On or about December 15, 2001, Sobiek filed his complaint, Adversary Proceeding No. 01-1267.

27. The Adversary Proceedings were consolidated for all purposes by order entered January 7, 2002.

28. All payments to FCS were made and there was no default.

The adversary proceeding filed by the debtor, as referenced in paragraph 26 of the Stipulation of Facts, seeks a declaratory judgment that the criminal action instituted by Hackney is a violation of 11 U.S.C. § 362; T.C.A. 39-14-116 has no application to Sobiek; and the *lien lis pendens* must be removed from Sobiek’s real property. In this state, criminal violations are in the name of the State of Tennessee and are brought by the Attorney General for the respective judicial district within the State. Neither the State of Tennessee nor the Attorney General for the judicial district in which the criminal action was performed are parties to this adversary proceeding.

Declaratory judgments being a matter of discretion for the court, this court declines to entertain the declaratory judgment action. *United States Lines, Inc. v. American Steamship Owners Mut. Prot. and Indem. Ass'n, Inc. (In re United States Lines, Inc.)*, 169 B.R. 804 (Bankr. S.D.N.Y. 1994). The adversary proceeding instituted by Sobiek against Hackney will also be dismissed.

At the trial, Hackney did not testify. Sobiek was the only witness at the trial. The parties did submit exhibits which were stipulated to be authentic and admissible in the proceeding.

Sobiek testified that it was his understanding that he and Hackney, through their counsel, made an agreement on November 2, 1999, that would allow Sobiek to pay \$16,000.00 to Hackney within thirty (30) days to settle all of their differences. Sobiek understood that Hackney would retain a lien on the John Deere tractor to secure this payment. This understanding is confirmed by Exhibit V as prepared by Hackney's attorney. The documents in Exhibit V were never executed, according to Sobiek, because the proposed promissory note contained blanks. No other explanation for this failure of communication was offered.

Following what he thought was the agreement, Sobiek sold the equipment in order to raise cash for the settlement. He testified that his attorney, and another attorney with whom he consulted, told him he was within his rights to do so. Whether he had a right to sell the equipment is not germane to a determination of this adversary proceeding. 11 U.S.C. § 727(a)(2)(A) provides:

(a) The court shall grant the debtor a discharge, unless—

(2) the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed—



(A) property of the debtor, within one year before the date of the filing of the petition;

It is the burden of the plaintiff to prove each element of § 727 by a preponderance of the evidence. *Barclays American Business Credit, Inc. v. Adams (In re Adams)*, 31 F.3d 389 (6th Cir. 1994); *Grogan v. Garner*, 498 U.S. 279, 111 S.Ct. 654, 112 L.Ed.2d 755 (1991) (dischargeability).

According to the only testimony offered in the proceeding, Sobiek was at all times acting with and upon advice of counsel. When Hackney discovered that Sobiek had sold the equipment, he obtained a criminal warrant for Sobiek's arrest. Sobiek then used the money obtained from the sale of the equipment to retain a criminal defense lawyer. There is no evidence that he in any way attempted to hinder, delay, or defraud any creditor, particularly Mr. Hackney.

This Memorandum constitutes findings of fact and conclusions of law as required by *Fed. R. Bankr. P. 7052*.

ENTER:

BY THE COURT

---

R. THOMAS STINNETT  
UNITED STATES BANKRUPTCY JUDGE

[entered 4/30/02]